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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/029,553	12/20/2001	Matthew J. Birdsall	P105 CON 3	6097

28390 7590 12/22/2006  
MEDTRONIC VASCULAR, INC.  
IP LEGAL DEPARTMENT  
3576 UNOCAL PLACE  
SANTA ROSA, CA 95403

EXAMINER
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THALER, MICHAEL H

ART UNIT	PAPER NUMBER
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3731

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	12/22/2006	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/029,553

Applicant(s)

BIRDSALL ET AL.

Examiner

Michael Thaler

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 20-24, 28, 31, 32, 36 and 42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 20-24, 28, 31, 32, 36 and 42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

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Claim 42 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Sawyer (5,108,417). Sawyer discloses a stent comprising at least one strut having a transverse cross section (e.g., the second of the five sections shown in figure 2, i.e. the section just to the left of the section below arrow A), the transverse cross section having a substantially flat top side (at the top of the section), a substantially flat bottom side (at the bottom of the section) that is substantially parallel to the top side (since the angle between the sides is relatively small) joined together through a smooth rounded left side (at the left of the figure) and a smooth rounded right side (at the right of the figure). Alternatively, it would have been obvious that the top and bottom sides are "substantially parallel" since they are almost parallel.

Claims 20-24, 28, 31, 32 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Summers (6,080,191) in view of Schmaltz et al. (5,449,372). Summers discloses a stent comprising at least one strut having a transverse cross section (shown in figure 19A), the transverse cross section having a top substantially flat circumferential side (at the top of figure 19A), a bottom substantially flat circumferential side (at the bottom of figure 19A), a right side (at the right of the figure)

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and a left side (at the left of the figure). Summers fails to disclose the left and right sides as being substantially curved such that the transverse cross section is devoid of sharp corners. However, Schmaltz et al. teach that the sharp edges of a stent should be rounded off in order to prevent damage to the blood vessel (col. 15, lines 54-59). It would have been obvious to round the left and right sides (i.e. the left and right edges) of the Summers stent shown in figure 19A so that it too would have these advantages. Note that the Summers strut 150 is so thin as compared to its width (as shown in figure 19A), that the left and right sides shown in this figure are edges. Thus, when following the Schmaltz et al. teaching of rounding off all of the sharp edges of a stent strut, it would have been obvious to round the entire left and right sides (edges) of the Summers strut 150. Alternatively, it would have been obvious to round off the corners at the top left, bottom left, top right and bottom right of figure 19A of Summers. This would result in a continuously curved left side and a continuously curved right side for the follow reason: The curve produced by the rounding off of the top left corner would merge with the curve produced by the rounding off of the bottom left corner because the Summers strut 150 is so thin as compared to its width. As to claim 21, Summers, in figure 21, shows a

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plurality of straight sections i.e. the sections of spine 162 between the looped ribs (161 in the figure or 164 in the specification) joined by a plurality of crown sections i.e. the looped ribs 161, 164 as broadly claimed. As to claim 24, Summers, in figure 17, shows stent 122 fused to a second stent 126. As to claim 28, Summers discloses a self expanding stent in col. 5, lines 19-22.

Applicant's arguments with respect to claims 20-24, 28, 31, 32 and 36 have been considered but are moot in view of the new ground(s) of rejection. Contrary to applicant's remarks, claim 42 is not a dependent claim.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Thaler whose telephone number is (571) 272-4704. The examiner can normally be reached Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

mht



MICHAEL THALER  
PRIMARY EXAMINER  
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